IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7974 OF 2005

Prakash Bapu Walvekar . .. Petitioner.

vs.

Shripati Appa Walvekar

& Ors. .. Respondents.

Mr. P.D. Dalvi for petitioner.

Mr. V.B. Rajure for respondent nos.2 to 4.

Mr. M.H. Solkar, AGP., for State.

CORAM : S.U. KAMDAR, J.

DATE : 23rd November, 2005.

P.C.:

. The present petition is filed challenging the order passed by the Assistant Registrar, Co-operative Societies, dated 16.11.2005 under section 154 of the Maharashtra Cooperative Societies Act, 1960 in Scrutiny Appeal No. 3 of 2005. By this order, the Asstt. Registrar has held that the rejection of the nomination by the returning Officer under order dated 4.11.2005 is invalid and has set aside the said order and permitted the person to contest the election.

2. The learned counsel for the petitioner has challenged the present order by contending that the order passed by the Registrar in Scrutiny Appeal No. 3 of 2005 is patently illegal and in contravention of the provisions of section 73FF of the Maharashtra Co-operative Societies Act and, therefore, this Court must interfere with the order and set aside the said order and hold that the nomination of a person is invalid and he is disqualified and, therefore, he should not be permitted to contest the election. In my opinion, the relief sought in the present petition tantamounts to interfering with the election process which has already commenced by issuance of notification in that behalf and thus in light of the series of settled decisions of the Apex Court it is not open for this court to interfere in the election process under Article 226 of the Constitution of India.

3. The learned counsel appearing for the petitioner has however drawn my attention to the judgment of the Apex Court in the case of Pundlik vs. State of Maharashtra and others, reported in 2005 (4) Mh. L.J. 254 and has contended that now the Apex Court has taken the view that in the case where the order is ex-facie nullity or contrary to the law then this Court can interfere under Article 226 of the Constitution of India even in election

process. I am not inclined to accept the contention. In the case before the Apex Court, the notification notifying the election was issued much subsequently and by that time the matter was already before the Apex Court and thus the Court proceeded on the footing that the election process has not commenced and thus granted reliefs in that case. In the present case, any order passed would directly interfere with the election process by permitting a person either to stand for the election or not to stand for the election. In my view the petitioner should adopt a proceedings by way of challenge to election after the said election process is completed under section 91 wherein the petitioner can raise all objections including the objections raised in the present petition that there is an irregularity in the election process. In that view of the matter, petition fails and the same is dismissed. There shall be no order as to costs.